

ORIGINAL

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

2005 FEB 18 P 1:02

E. Jerome Matry)

-vs-)

Peoples Gas Light and Coke Company)

Complaint as to improper accounting of)

Services request for an audit and)

Investigation for service at 4344 North)

Claredon Avenue, Chicago, Illinois)

04-0578 CHIEF CLERK'S OFFICE

Complainant's Argument

Under Section 200.25 (a) the ICC's "principal goal is to assemble a complete factual record to serve as a basis for a correct and legally sustainable decision." The proposed order, as issued by the Administrative Law Judge on February 1, 2005, negates this principal goal by seeking to dismiss the Complainant's case on the basis of a hyper-technical argument. More importantly, the Respondent, Peoples Gas Light and Coke Company, have forfeited any right to now argue that an improper party has been named for the following reasons:

1. Peoples's Gas Light and Coke Company forfeited this argument by answering the Complainant's complaint on October 15, 2004;
2. Peoples Gas Light and Coke Company has failed to raise this argument throughout these proceedings while being represented by competent legal counsel;
3. Respondent's late hyper-technical argument should not be considered in light of Section 200.25 (b,) which requires parties to act diligently and in good faith. Clearly by answering Complainant's complaint on October 18, 2004 and allowing these cases to proceed thus far, Defendant's have not acted with diligence. Further, by answering the complaint and proceeding on the merits Respondent now cannot be said to act in good faith when they were placed on notice and failed to raise any objection to the Respondent named in the complaint. How, on the one hand, can People Light Gas and Coke, answer the initial complaint, appear at hearing in the matters, and defend the case without knowledge

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Exhibit 5

that they are the intended defendant in these matters? People Gas Light and Coke is clearly acting in Bad Faith in violation of section 200.25(b) and the ICC should take appropriate action to protect the complaint's rights in accordance with its mission to assemble a complete factual record to serve as a basis for a legally sustainable decision.

4. Clearly by its answer to the complaint, Peoples Gas Light and Coke has acknowledged that it is the intended defendant and should not be granted a motion to dismiss with prejudice based on its own complicity. Contra to its Motion To Dismiss and supported by 200.25(b), People Gas Light and Coke has not been prejudiced or disadvantages in any way.

A simple motion to amend the caption would alleviate all issues raised in Respondent's Motion to Dismiss and could have been made upon the courts own motion. In that such a motion was not made, Complaint hereby incorporated in this reply its Motion to correct the caption of the case to reflect the proper parties.

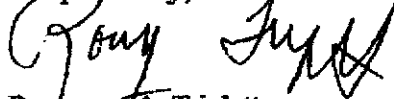
As the ICC and all parties are aware, Illinois is a notice pleading state and Respondent Peoples Gas Light and Coke had ample notice; why else would they answer a complaint and defend a case if they were not noticed as the intended Defendant?

Additionally, by proceeding to this point and failing to raise the issue in there initial answer, Peoples Gas Light and Coke has waived any argument as to proper notice.

Wherefore, Complaint, by and through counsel, hereby request that the ALJ amend the caption to reflect the proper parties in accordance with Illinois law and the Illinois relation back rule.

Complainant hereby request the February 1, 2005 proposed order be amended to reflect all issues raised herein.

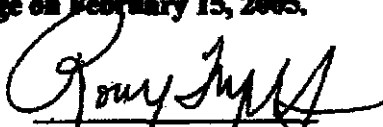
Respectfully, Submitted



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CERTIFICATE OF SERVICE

I, Rosemary A. Triplett, an attorney, certify that I caused a copy of the Complainant's Exception to the Proposed order of February 1, 2005 and Complainant's Argument to be served on the parties of record by placing a copy in the United States Mail, first class postage on February 15, 2005.


Rosemary A. Triplett

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**STATE OF ILLINOIS
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-vs-

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04-0578

**Complaint as to improper accounting of
Services request for an audit and
Investigation for service at 4344 North
Clarendon Avenue, Chicago, Illinois**


Notice of Filing

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**Please take Notice that on February 15, 2005 I filed with the Clerk of the Illinois
Commerce Commission, Complainant's exceptions to the Proposed Order entered
February 1, 2005 and Complainant's Argument.**


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